

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRS, LLC

Plaintiff,

v.

TURNER BROADCASTING SYSTEM,
INC.

Defendant.

)
)
)
)
)
)
)
)
)
)

C.A. No. 08-127-GMS

**DECLARATION OF INGE LARISH IN SUPPORT OF DEFENDANT
TURNER BROADCASTING SYSTEM, INC.'S MOTION TO TRANSFER
TO THE WESTERN DISTRICT OF WASHINGTON**

I, Inge Larish, the undersigned, declare:

1. I am an attorney with Klarquist Sparkman, LLP, counsel for Turner Broadcasting System, Inc., in the above-captioned matter. I am admitted to practice before this court and am a member of the Washington State Bar. I have personal knowledge of the matters stated herein unless indicated otherwise, and I declare as follows:

2. Attached hereto as Ex. A is a true copy of Network Commerce Answers to

Microsoft's First Set of Interrogatories Response to Interrogatory No. 2, as served in *Network Commerce, Inc. v. Microsoft Corp.*, W.D.Wa. 2:01-cv-01991.

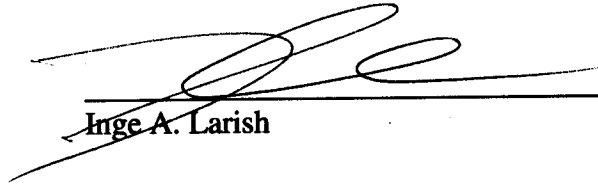
3. Attached hereto as Ex. B is a true and accurate copy of Network Commerce Initial Disclosures as filed with the court in *Network Commerce, Inc. v. Microsoft Corp.*, W.D.Wa. 2:01-cv-01991.

4. Defendant's counsel has such documents as produced from the Network Commerce in the litigation with Microsoft and archived as permitted by the protective order in *Network Commerce v. Microsoft Corp.*. Defendant's counsel has already written to Plaintiff's counsel to ascertain whether Plaintiff and its counsel have maintained Network Commerce documents and to request permission pursuant to the protective order entered in *Network Commerce v. Microsoft Corp.* to use the documents in the current litigation. At this time, Defendant's counsel has not received a response to this request.

5. According to the Judicial Caseload Profile, District Court Statistics, published by the Administrative Office of the United States Courts, for the period ending December 2007, the time from filing to disposition between the two courts is 27 months in this Court and 18 months in the Western District of Washington. Attached hereto as Ex. C is the U.S. District Court Judicial Caseload Profiles for Western District of Washington and the District of Delaware.

I swear under penalty of perjury, under the laws of the United States, that the foregoing statements are true and accurate to the best of my knowledge.

Executed this 8th day of May, 2008 at Seattle, Washington.



Inge A. Larish

CERTIFICATE OF SERVICE

I, Karen E. Keller, Esquire, hereby certify that on May 9, 2008, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Michael G. Busenkell, Esquire
Eckert Seamans Cherin & Mellott LLC
300 Delaware Avenue, Suite 1210
Wilmington, DE 19801

I further certify that on May 9, 2008, I caused a true and correct copy of the foregoing document to be served by e-mail and hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

BY E-MAIL

Robert Rohde, Esquire, Esquire [brohde@rohdelaw.com]
Rohde & Van Kempen PLLC
1001 Fourth Avenue, Suite 4050
Seattle, WA 98154-1000

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

/s/Karen E. Keller
Karen E. Keller (No. 4489) [kkeller@ycst.com]
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6600

EXHIBIT A

*scanned
-u*

THE HONORABLE MARSHA J. PECHMAN

✓ u
~~FILE~~ *scanned*
SC → JCC
JTJ
JEA
MSUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLENETWORK COMMERCE, INC., a Washington
Corporation,

Plaintiff,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

NO. C01-1991P

PLAINTIFF NETWORK COMMERCE'S
ANSWERS TO DEFENDANT
MICROSOFT CORPORATION'S FIRST
SET OF INTERROGATORIES

Plaintiff Network Commerce, Inc. ("NCI") submits the following responses to
defendant Microsoft Corporation's ("Microsoft") First Set of Interrogatories pursuant to and
in accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure.

1 this interrogatory from the '124 patent—which is publicly available and/or already in
2 Microsoft's possession—and the burden of doing so is substantially the same for Microsoft as
3 it would be for NCI. Without waiving these objections, NCI refers Microsoft to the
4 specification of the '124 patent, which speaks for itself. The specification describes a
5 preferred embodiment of the invention, and has a written description that the patent examiner
6 found was sufficient to support the claim language.
7
8
9
10
11

12 INTERROGATORY NO. 2
13

14 Separately, for each claim of the '124 Patent, set forth a complete chronological
15 description, in accordance with the Instructions (see, e.g., Instruction 8 above), of the
16 development of the claimed subject matter from conception to actual reduction to practice.
17
18
19
20

21 ANSWER TO INTERROGATORY NO. 2
22

23 NCI objects to this interrogatory as overly broad and unduly burdensome, especially
24 to the extent it seeks an answer "in accordance with the Instructions" (see General Objection
25 No. 8). NCI also objects on the grounds that the interrogatory is not reasonably calculated to
26 lead to the discovery of admissible evidence to the extent it seeks the dates of conception and
27 reduction to practice of the claimed invention. The dates of conception and reduction to
28 practice are not relevant to any claim or defense asserted in this action, and would become
29 relevant only if and when there was an issue concerning prior inventorship. Without waiving
30 these and its general objections, NCI responds that the general concept for the invention
31 claimed in the '124 patent arose at least as early as early or mid-1996, in connection with the
32 development of certain technology, including a website editing product called "Internet
33 Guru" and licensing technology. As part of that project, a server was developed which
34 permitted the secure transfer and delivery of digital content over the Internet. By mid-1996,
35 a licensing module that permitted the licensing of digital content over the Internet was
36
37
38
39
40
41
42
43
44
45
46
47

1 incorporated into the server, and was successfully beta tested soon thereafter. By at least
2
3 January 1997, the system was able to conduct electronic commerce as disclosed in the '124
4
5 patent and was successfully beta tested soon thereafter. The persons most knowledgeable
6
7 concerning the conception and reduction to practice of the claimed invention are the named
8
9 inventors—Ganapathy Krishnan, John Guthrie, and Scott Oyler. Documents that relate to
10
11 the conception and reduction to practice of the claimed invention, to the extent such
12
13 documents exist, will be produced in response to Microsoft's First Set of Requests for
14
15 Production of Documents.

16
17 INTERROGATORY NO. 3

18
19 For each claim of the '124 Patent, describe, in accordance with the Instructions (see,
20
21 e.g., Instruction 8 above), the circumstances leading to and surrounding the first public
22
23 disclosure, or first sale or offer for sale, of the claimed subject matter, and all disclosures of
24
25 the claimed subject matter, private or otherwise, to any person other than the inventor or
26
27 inventors of that subject matter which occurred prior to July 15, 1997.

28
29 ANSWER TO INTERROGATORY NO. 3

30
31 NCI objects to this interrogatory as vague, overly broad, and unduly burdensome,
32
33 especially to the extent it seeks an answer "in accordance with the Instructions" (see General
34
35 Objection No. 8). NCI also objects on the grounds that this interrogatory is not reasonably
36
37 calculated to lead to the discovery of admissible evidence to the extent it seeks information
38
39 concerning disclosures occurring after the latest possible critical date of July 15, 1996 or non-
40
41 public disclosures. Without waiving these or its general objections, NCI responds that it is
42
43 unaware of any public disclosures, sales, or offers for sale of the claimed invention prior to
44
45 July 15, 1996. NCI did have discussions with Kinetics, Inc. in approximately June or July of
46
47 1996 concerning the possible investment in and/or acquisition of the company by Kinetics. In

INTERROGATORY NO. 13

For every product or service identified in your answer to Interrogatory No. 12, state:

- (a) the dates of first making, use, public disclosure, sale, offer for sale, or for license;
- (b) whether such making, marketing, use, sale, offer for sale or for license is presently continuing, and if not, give the dates of termination thereof;
- (c) whether the division, subsidiary, or business unit of Network Commerce that performed such making, marketing, use, sale, offer for sale or for license was sold, and if so, to whom.

ANSWER TO INTERROGATORY NO. 13

See Answer to Interrogatory No. 12.

DATED this 19th day of April 2002.

PERKINS COIE LLP

By William D. Fisher
Ramsey M. Al-Salam, WSBA #18822
William D. Fisher, WSBA #27475
Attorneys for Plaintiff Network Commerce, Inc.

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NETWORK COMMERCE, INC.,
a Washington corporation,

Plaintiff,

v.

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

NO. C01-1991P

PLAINTIFF NETWORK COMMERCE'S
INITIAL DISCLOSURE STATEMENT

Plaintiff Network Commerce, Inc. ("Network Commerce") submits the following initial disclosure statement in accord with Fed. R. Civ. P. 26(a)(1). This statement is submitted without benefit of defendant Microsoft Corporation's ("Microsoft") initial disclosure statement or discovery. Accordingly, Network Commerce reserves the right to disclose additional information regarding any of its claims or defenses, or to otherwise supplement these disclosures pursuant to Fed. R. Civ. P. 26(e), following Microsoft's filing of an initial disclosure statement and/or discovery in this action.

INDIVIDUALS WITH DISCOVERABLE INFORMATION

1. **Ganapathy Krishnan**
14019 NE 85 Court
Redmond, WA 98052
425-497-0289

Mr. Krishnan is one of the named inventors in the patent-at-issue, U.S. Patent No. 6,073,124 (the "'124 patent"), and has knowledge concerning the invention disclosed in the '124 patent, including its conception and reduction to practice.

2. **Scott Oyler**
Developer
Network Commerce, Inc.
411 First Avenue South
Suite 200 N
Seattle, WA 98104

Mr. Oyler is one of the named inventors in the '124 patent, and has knowledge concerning the invention disclosed in the '124 patent, including its conception and reduction to practice.

3. **John L. Guthrie**
11215 NE 128th Street, #L203
Kirkland, WA 98034
(425) 814-6934

Mr. Guthrie is one of the named inventors in the '124 patent, and has knowledge concerning the invention disclosed in the '124 patent, including its conception and reduction to practice, and Microsoft's infringement of the '124 patent. Mr. Guthrie also has knowledge concerning Network Commerce's prior business activities, which may be relevant to the claims made by Microsoft for infringement of United States Patent Nos. 5,794,006 (the "'006 patent"), 5,822,526 (the "'526 patent"), and 5,999,914 (the "'914 patent").

- 1 4. **Dwayne Walker**
2 Chairman and CEO
3 Network Commerce, Inc.
4 411 First Avenue South
5 Suite 200 N
6 Seattle, WA 98104
7
8
9

10 Mr. Walker has knowledge of Network Commerce's business and what it would have
11 required for a royalty for licensing the '124 patent if the parties had negotiated a license at the
12 time the infringement began. Mr. Walker also has knowledge of Network Commerce's prior
13 and current business activities, which may be relevant to the claims made by Microsoft for
14 infringement of the '006 patent, the '526 patent, and the '914 patent.
15
16
17
18
19

20 5. Presently unidentified current and/or former employees of Microsoft will have
21 knowledge concerning Microsoft's infringement of the '124 patent.
22
23
24

25 **RELEVANT DOCUMENTS IN**
26 **NETWORK COMMERCE'S POSSESSION OR CONTROL**
27

28 1. The '124 Patent Documents. The '124 patent has been provided to Microsoft.
29 The '124 patent's file history is publicly available.
30
31

32 2. Technical Documents Relating to the '124 Patent. These documents are
33 located at Network Commerce's headquarters in Seattle, Washington.
34
35

36 3. Documents Relating to Microsoft's Infringement. These documents are
37 located at Network Commerce's headquarters in Seattle, Washington.
38
39

40 4. The '006 Patent, the '526 Patent, and the '914 Patent Documents. These
41 documents are either in Microsoft's possession or publicly available.
42
43
44
45
46
47

1 5. Documents Relating to Network Commerce's Alleged Infringement of the
2 '006 Patent, the '526 Patent, and the '914 Patent. These documents are located at Network
3 Commerce's headquarters in Seattle, Washington. Network Commerce cannot determine the
4 scope of such documents at this time.
5
6
7

8
9
10 **COMPUTATION OF DAMAGES**

11 Network Commerce has not yet prepared any computation of damages. Network
12 Commerce will base its computation of damages for its claim, in part, on sales and other
13 information that Network Commerce expects Microsoft to provide during discovery.
14
15
16
17

18 **INSURANCE AGREEMENT**

19 Not applicable.
20
21
22
23

24 DATED this 4th day of March 2002.
25

26 **PERKINS COIE LLP**

27
28
29
30 By William D. Fisher
31 Ramsey M. Al-Salam, WSBA #18822
32 William D. Fisher, WSBA #27475
33
34
35

36 Attorneys for Plaintiff Network Commerce, Inc.
37
38
39
40
41
42
43
44
45
46
47

EXHIBIT C

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
DELAWARE				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			1,065	1,077	1,190	1,797	1,362	2,028	U.S.	Circuit
	Terminations			975	1,419	1,448	1,516	1,507	1,478		
	Pending			1,511	1,501	1,853	2,085	1,836	1,999		
	% Change in Total Filings	Over Last Year		-1.1						50	4
		Over Earlier Years		-10.5	-40.7	-21.8	-47.5		90	6	
Number of Judgeships				4	4	4	4	4	4		
Vacant Judgeship Months**				9.5	.0	.0	.0	1.9	3.1		
ACTIONS PER JUDGESHIP	FILINGS	Total	267	270	298	449	340	507	80	5	
		Civil	218	233	264	414	306	462	72	5	
		Criminal Felony	38	30	28	29	25	38	81	5	
		Supervised Release Hearings**	11	7	6	6	9	7	82	3	
	Pending Cases		378	375	463	521	459	500	42	5	
	Weighted Filings**		379	367	422	534	424	516	61	3	
	Terminations		244	355	362	379	377	370	83	5	
	Trials Completed		21	15	20	19	23	18	43	3	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	8.5	9.3	9.4	9.1	8.3	9.8	43	2	
		Civil**	12.5	16.8	10.9	14.0	11.2	8.2	88	5	
	From Filing to Trial** (Civil Only)		27.0	26.0	23.5	26.0	24.0	22.5	54	3	
OTHER	Civil Cases Over 3 Years Old**	Number	108	142	156	65	66	99			
		Percentage	8.2	10.6	9.1	3.4	3.9	5.4	77	5	
	Average Number of Felony Defendants Filed Per Case		1.1	1.2	1.2	1.2	1.3	1.1			
	Jurors	Avg. Present for Jury Selection	41.56	39.60	39.82	38.50	34.98	33.84			
		Percent Not Selected or Challenged	31.7	24.1	22.8	20.9	24.0	24.4			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	870	28	4	229	9	3	32	68	39	176	103	14	165
Criminal*	150	1	26	25	46	20	2	17	5	2	-	1	5

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See ["Explanation of Selected Terms."](#)

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
WASHINGTON WESTERN				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			3,573	3,471	4,167	4,858	5,038	4,103	U.S.	Circuit
	Terminations			3,813	4,101	4,584	4,337	3,491	4,041		
	Pending			2,671	3,280	4,303	4,608	3,890	2,373		
	% Change in Total Filings	Over Last Year		2.9						34	8
		Over Earlier Years			-14.3	-26.5	-29.1	-12.9	62	14	
Number of Judgeships				7	7	7	7	7	7		
Vacant Judgeship Months**				20.9	14.1	6.7	14.0	2.6	12.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	511	496	595	694	720	586	23	6	
		Civil	411	396	487	582	616	498	15	5	
		Criminal Felony	72	69	74	78	68	56	47	9	
		Supervised Release Hearings**	28	31	34	34	36	32	31	11	
	Pending Cases			382	469	615	658	556	339	41	8
	Weighted Filings**			559	572	626	611	621	617	12	3
	Terminations			545	586	655	620	499	577	16	4
	Trials Completed			22	19	16	13	10	12	38	5
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	8.0	7.9	7.3	6.3	6.2	5.8	39	9	
		Civil**	8.1	9.1	9.6	7.2	6.4	5.8	31	5	
	From Filing to Trial** (Civil Only)			18.0	19.0	19.4	16.4	16.7	18.0	14	2
OTHER	Civil Cases Over 3 Years Old**	Number	36	310	259	32	23	36			
		Percentage	1.7	11.2	6.9	.8	.7	1.8	11	1	
	Average Number of Felony Defendants Filed Per Case			1.5	1.7	1.6	1.7	1.6	1.6		
	Jurors	Avg. Present for Jury Selection	44.77	45.30	36.80	42.94	38.85	36.51			
		Percent Not Selected or Challenged	34.0	39.9	25.5	42.2	29.1	32.8			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2874	284	197	579	46	18	241	338	251	140	326	22	432
Criminal*	489	19	134	92	60	70	23	28	3	20	9	18	13

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See ["Explanation of Selected Terms."](#)